



**NATS (En Route) plc price control review for Control Period 3  
2011-2015**

**CAA Mandate (terms of reference) for Customer Consultation  
Agreed between CAA and NATS (En Route) plc**

**13 March 2009**

**CAA Mandate (terms of reference)  
Agreed between NERL and CAA for the Commencement by NERL of CP3  
Consultation with Customers**

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## CAA Mandate

### 1. Introduction

#### *Background*

- 1.1. The CAA considers that there is a good case for seeking to develop a greater role for NERL/airline consultation in shaping and informing the outcome of the CP3 review. It set out a proposal for the Customer Consultation process in a consultation paper in October 2008. Following responses from stakeholders, the CAA decided in its February 2009 consultation paper to agree to this process, with amendments.
- 1.2. This paper is the mandate from the CAA to NERL and its customers, to start the Customer Consultation process. It lays out the:
  - Legal context for the review;
  - Scope of NERL activities under review;
  - Strategic questions for discussion;
  - Duties of the Regulator – Division of responsibilities;
  - CAA expectations of attendee behaviour;
  - CAA use of Customer Consultation material; and
  - Consent to consult.
- 1.3. The CAA will retain overall responsibility for setting the NERL price control, and for instigating the processes leading up to and informing the CAA's ultimate decision. In reaching its CP3 decision, the CAA will draw on evidence relating to a range of regulatory questions regarding NERL's current and future performance.

#### *Overall CAA expectations of the process*

- 1.4. The CAA expects NERL to establish a Customer Consultation Working Group ("CCWG"), which will be convened with a fair representation of its airline customer base.
- 1.5. The CAA expects the CCWG to ratify a code of conduct, and for individual members of the group to abide by this code.
- 1.6. The CAA expects NERL to deliver to the CAA by the end of 2009 a revised NERL Business Plan, and for the Customer Consultation process to draw out the range of airlines' respective views on:

- the key customer strategic questions and priorities for the CP3 period and beyond; and
- NERL's proposed plan for meeting users' needs over this period, in terms of safety, capacity, service quality, fuel efficiency, operational contingency and environmental issues.

1.7. The CAA expects the CCWG to work within the following timetable, to enable the CAA to complete its price control decision in time for the start of the CP3 period:

18 February 2009	CAA statement on structure and conduct of review and current views on the scope of the price control, the overall price control 'architecture', regulatory finance and cost of capital.
Summer 2009	Update on progress of NERL-airlines customer consultation, plus results of parallel CAA scrutiny of aspects of NATS' business plan
Autumn 2009	Outputs from customer consultation submitted to CAA
January/February 2010	CAA publishes initial price control proposals for consultation
July 2010	CAA issues final proposals
August 2010	Hearings with parties
September 2010	CAA decision
1 January 2011	Eurocontrol price cap comes into effect
1 April 2011	Oceanic price cap comes into effect

1.8. The CAA expects NERL to submit a revised business plan in the period November-December 2009.

## 2. CAA commentary on the process framework

2.1. The CAA expects the process to be conducted within the following framework:

*Stage 1: Mandate from the CAA – 16 March 2009*

2.2. This CAA Mandate is aimed at establishing the Customer Consultation process, including, among other elements:

- A list of questions that it requested NERL and its customers to discuss;
- The scope of NERL activities under review, to ensure that the Customer Consultation discussion remains relevant to the CAA's final conclusions;
- A timetable with deadlines for the delivery of a set of Customer Consultation feedback results;
- The format and expected content for the feedback of results of Customer Consultation;
- Standards for conduct at meetings, including the preparation and timing of material for meetings, the minuting of comments and the subsequent reporting of opinions back to the CAA; and
- A policy statement on how the CAA would propose to use any results derived through the Customer Consultation process.

*Stage 2: Establishing the Customer Consultation Working Group – March 2009*

2.3. The CAA expects NERL and its customers to form a process for fulfilling this mandate. NERL has proposed to establish a Customer Consultation Working Group (CCWG), of senior commercial, financial, operational and regulatory airline and airline trade body representatives, who would have the ability to commit their respective organisations to conclusions derived through the process. This would be done through NERL invitation, issued in February 2009, to the chief executives of customer airlines and key airline trade bodies, inviting representatives to attend a launch meeting in March 2009.

2.4. The CAA considers that it would be advantageous for the CCWG to be populated with a core of individuals, who can both represent the industry and can provide comprehensive input in the review of key strategic issues. The CAA considers that customers could agree to be represented by around 15 representatives, both from the largest airlines and from airline trade bodies. This might also include smaller airlines nominated by other smaller airlines to participating in a wider representative capacity. It should be noted that if those airlines that currently regularly attend NERL's other consultation processes were to participate in the Customer Consultation Working Group, then airlines

comprising over 50 per cent of NERL customers, by aircraft movements, would be represented<sup>1</sup>.

- 2.5. If possible, the CCWG should be co-chaired by NERL and a representative of customers, similar to NERL's Operational Partnership Agreement meetings. However, if there is no airline agreement to a co-chair representative, the CAA considers that it would be possible to initiate work within the process on the basis of a single NERL chair, as long as such arrangements are workable, conducive to the delivery of robust and timely outputs useful to the CAA's price review, and be able to sustain the confidence of all parties. It would be open to airlines subsequently to agree a co-chair or to agree with NERL on an independent chair.
- 2.6. In practice, the role of the CCWG would be likely to encompass:
- Defining the issues and sub-issues to be discussed;
  - Agreeing an approach to resolving individual issues/sub-issues;
  - Agreeing a timetable for milestones for consulting on the key customer strategic questions, which fit within the CAA's wider timetable for concluding the CP3 review, taking into account the fact that some conclusions from NERL-airlines consultation would need to be made sequentially; and
  - Delivering a set of feedback results and meeting minutes to the CAA, within the agreed timeframe.
- 2.7. The CAA envisages that the CCWG would establish a plan agreed between NERL and airline representatives, consistent with the guidelines in the CAA's mandate, for the conduct of the Customer Consultation, in order to deliver the work programme described above.
- 2.8. The CAA considers that such a Customer Consultation process would be more likely to deliver productive outputs if it is as fully informed as possible of all relevant projections and supporting evidence. To that end, the CAA would expect NERL to issue a Baseline Business Plan to customers at the start of the consultation process. This Baseline Business Plan would include an indicative price profile, based on NERL's view at March 2009 of CP3 projections, which would allow customers to see the implications of potential variations in customer requirements.

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<sup>1</sup> NERL's customer base is large, featuring a core of airlines with a greater number of movements, and a large number of airlines with a smaller number of movements. This means that to increase the representation of airlines much beyond 50 per cent of movements, a significant number of airlines would need to engage within the Customer Consultation Working Group. The CAA therefore sees an important role for the trade bodies, smaller airlines acting in a wider representative capacity and the core airlines, to represent the rest of the industry. The CAA also notes that all users will have the opportunity to respond, in 2010, to the CAA's own CP3 proposals derived by the CAA with input from the Customer Consultation process.

2.9. The CAA would for its part intend to inform Customer Consultation in a number of ways:

- Setting out indicative views on the scope of the price control, the overall price control ‘architecture’, regulatory finance and the cost of capital in February 2009;
- Issuing the results during Summer 2009 of its parallel stream of activity in the first half of 2009, in scrutinising NERL’s cost efficiency, programme management and business risks;
- Providing updates (where relevant) on developments in EU negotiations on the Single European Skies performance requirements, which could have a bearing on the interaction between UK regulation of NERL and the UK’s contribution towards EU-wide performance goals.

*Stage 3: Customer consultation & consultation milestone evaluation – April-November 2009*

2.10. To manage the risk that discussions may not progress within the required timetable, the CAA considers that it would be helpful for it to be able to assess progress against key milestones established within the project plan at predefined times. To that end, the CCWG should report to the CAA minutes after each central CCWG meeting, reporting against the milestones established in the project plan.

2.11. The CAA would envisage reviewing the CCWG’s performance against the predefined milestones at one review point during summer 2009, from which it would draw conclusions on the likelihood of progression of the consultation through each of the issues discussed.

*Stage 4: Revising the business plan – April-November 2009*

2.12. The CAA would envisage that NERL would review the Baseline Business Plan, with a view to adjusting it, given discussion with customers on key strategic issues. In so doing, NERL should lend weight to planning outcomes which would be likely to deliver the greatest overall value to users, taking account of safety, economic and longer term capacity considerations.

2.13. The CAA considers that consensus on major issues would be welcomed, but is unlikely to occur in every instance, and that Customer Consultation has the potential to yield useful contributions to the price control review even in the absence of consensus. Where possible, NERL should take into account the full range of feedback results of the consultation in producing its revised Business Plan. The CAA itself will fully consider majority and minority views of customers in forming its own regulatory proposals and price control decisions.

- 2.14. The CAA also considers that, in assessing overall value to users from revisions to the plan, NERL and those airlines engaged in the consultation process should take into account the interests, where known, of those customers who have chosen not to participate in the Customer Consultation process. The involvement of airline trade bodies, which speak for significant numbers of airlines, and smaller airlines acting in a wider representative capacity could be an important channel for ensuring fair representation. It should also be noted that the latter stages of the price review entail CAA-led consultation on its own comprehensive regulatory proposals, which should allow all interested parties' views to be taken into account within the price review.
- 2.15. The CAA considers that any customer should have the right to withdraw from the Customer Consultation process. However, once committed, the CAA considers that, by withdrawing, a customer should accept that it would diminish its ability to influence discussions, and thus any resulting change in the business plan may not be aligned with its interests. (All airlines, regardless of their participation or otherwise in Customer Consultation, and other interested parties, would retain their rights to fair and equal consultation on the CAA's regulatory proposals, informed by the outcome of Customer Consultation.)
- 2.16. The CAA further considers that either party in the Customer Consultation process should be able to end the discussion on any particular issue. The CAA considers that in the extreme case, either NERL or a majority of customers should recognise those issues on which Customer Consultation may be approaching stalemate, and end the dialogue. At this point, the differing views of participants would be recorded and reported to the CAA, in order for the CAA to work and conclude on the issue.
- 2.17. Finally, the CAA considers that customers should have the right to engage with the process, after the discussions have begun, but should not expect issues already discussed to be reopened.

*Stage 5: Providing the CAA with the results of the Customer Consultation – November-December 2009*

- 2.18. Once a revised regulatory business plan is formed, then NERL should present the plan, and along with airline participants, should jointly present the feedback results to the CAA, in the required formats, within the CAA's required timeframes. The CAA would also envisage that the submissions would include the complete and agreed minutes of each of the discussion meetings, to provide the CAA with visibility of the range of views. The CAA would then take a view on the appropriate course of action, given full visibility of the result of the consultation.

*Stage 6: CAA-led Consultation on Regulatory proposals for CP3 price control  
– January-July 2010*

- 2.19. The CAA would assess the outputs from Customer Consultation, and its own scrutiny analysis. It would conclude on the appropriate use of the input from the consultation process, in light of its statutory duties, on each of the issues mandated to the process.
- 2.20. Subject to the CAA's consideration of the extent to which the results from any Customer Consultation reflected the interests of passengers, cargo shippers and airlines not directly represented in such consultation, the CAA would be minded to adopt agreed outcomes and to incorporate such into its own proposals for CP3 price controls. The CAA would also be minded to place weight on partial agreements, for example where NERL and airlines may have converged on proposals for investment, capacity and service quality, while remaining not in full agreement on the projected costs of delivering such over CP3. In such cases, the CAA would form its own judgment and set out its own proposals, for consultation, on the overall combination of projected outputs, costs and regulated revenues which it considered best met its statutory duties.
- 2.21. The CAA would envisage issuing its firm proposals for CP3, informed by Customer Consultation, in January-February 2010, for three months consultation. To do so, the CAA would aim to draw on the then latest NERL business plan and Service & Investment Plan. NERL has to date issued these documents in March of each year – the CAA will discuss further with NERL the scope for it to bring forward by 1-2 months the finalisation of these documents, in order to provide timely input to the CAA's decision-making in early spring 2010.
- 2.22. The CAA would then issue its final proposals for the statutory one month consultation in around July 2010, before issuing its CP3 decision in September 2010.
- 2.23. In the event that, in the CAA's view, there were material gaps in the evidence base emerging from the Customer Consultation process, and/or substantial divergences of view between NERL and its customers which required further investigation, then the CAA would reserve the right to defer issuing its firm proposals pending further scrutiny by the regulator. The timetable would allow for such further analysis to be conducted in autumn/winter 2009/10. It would also allow NERL and airlines a period of time to reflect on the outcomes of the Customer Consultation process, and to bring their respective views and evidence to bear on the CAA's consideration of the outstanding issues.

### 3. Legal context for the review

- 3.1. The section provides a legal context for the Customer Consultation process, within the over NERL CP3 price control review.

#### *CAA's statutory duties*

- 3.2. In performing its regulatory functions under the Transport Act 2000 ('the Act'), including modifying conditions, the CAA is bound by its statutory duties in section 2 of the Act. In summary they are:

- an overriding duty to maintain a high standard of safety in the provision of air traffic services; accompanied by duties:
  - to further the interests<sup>2</sup> of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights of property carried in them;
  - to promote efficiency and economy on the part of licence holders;
  - to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences;
  - to take account of the UK's international obligations notified to the CAA by the Secretary of State;
  - to take account of any guidance from the Secretary of State on environmental objectives (no such guidance has been issued to date); and
  - the CAA must exercise its functions under the Act so as to impose on licence holders the minimum restrictions consistent with the exercise of those functions.

#### *Statutory framework*

- 3.3. The provision and economic regulation of air traffic services in the UK is governed by the Transport Act 2000. The Act provided for the transfer to the Secretary of State of the CAA's 100 per cent shareholding in NATS in preparation for the implementation of the Public Private Partnership (PPP), one of the key aims of which was to separate the supply of services from their regulation. The Act also established a system of licensing and regulation for the provision of air traffic services, including a special administration regime. In addition, it conferred competition functions under the Competition Act 1998 and the Enterprise Act 2002 on the CAA in relation to air traffic services, to be exercised concurrently with the Office of Fair Trading.

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<sup>2</sup> Such interests are limited to interests regarding the range, availability, continuity, cost and quality of air traffic services and the reference to furthering interests includes a reference to furthering interests (where the CAA considers appropriate) by promoting competition in the provision of air traffic services.

- 3.4. The Secretary of State and the CAA are given specific roles and responsibilities under the Act in the area of economic regulation. For example, the Secretary of State grants licences and exemptions. He also has powers of direction over the CAA in respect of licence modifications and over the Competition Commission in respect of references made by the CAA. He can petition the court for an air traffic administration order. The roles of the CAA, acting through its economic regulation group, are principally those of economic regulator, monitoring and enforcing air traffic services licences and modifying conditions in those licences, and of competition authority in relation to air traffic services.
- 3.5. Anyone who supplies air traffic services in the UK may do so only under a licence or an exemption. The Secretary of State issued an air traffic services Licence to NERL in March 2001 and it came into effect on 26 July 2001.
- 3.6. The Licence includes both terms and conditions. This distinction is important since the CAA may only modify the conditions in a licence. The licence terms include both the duration of the Licence and the description of the services which are exclusive to NERL. As far as duration is concerned, the Licence is unlimited but the Secretary of State may give 10 years' notice of termination but not before 20 years have elapsed. In addition, the Licence confers on NERL exclusive provision of what are termed "Core Services" in the Licence until 25 July 2011. The Core Services include the UK en route air traffic control service, the Oceanic en route air traffic control service, the Advisory Control Service and the London Approach service. Unless the Secretary of State modifies the terms of the Licence it would only be possible for other providers to be licensed to provide the Core Services alongside NERL after July 2011. The licensing authority for this purpose is the Secretary of State. The CAA can only issue new licences with the express approval of the Secretary of State, or in accordance with a general authority given by the Secretary of State.
- 3.7. Currently, only NERL holds a licence since all other providers of air traffic services in the UK are subject to a general exemption issued in 2001. That exemption expires on 5 February 2011 and without an extension of the general exemption all providers of air traffic services would be required to have a licence from that date, including those providing services at aerodromes.

*Legal basis for discussion*

- 3.8. The CAA is mandating the Customer Consultation process for NERL's CP3 price control review, in the context of its statutory duties, within the statutory framework. The CAA considers that, by providing high quality information at a formative stage of the review, this process would be likely to assist the CAA

modify NERL's licence conditions through the CP3 review in the manner best calculated to achieve its statutory duties.

3.9. The CAA's objectives for Customer Consultation are:

- to enable the CAA to set price controls on NERL for the CP3 period which are as well informed as possible about users future requirements for service, capacity, resilience and cost efficiency;
- to enable airline users to understand as fully as possible NERL's plans for CP3 and to provide airlines with an opportunity to engage with NERL on developing these plans before their submission to the CAA;
- to enable NERL to conduct a comprehensive and structured consultation with its airline users to inform the development of its CP3 business plan before submission to the CAA; and
- to provide a forum in which NERL and its airline users could seek to reach agreement on aspects of the CP3 plans and, to the extent that this is not possible, to provide the CAA with a clear view of the positions of each party.

*Competition law basis for discussion*

3.10. All parties to the Customer Consultation should be aware of their responsibilities to operate within the bounds of competition law. The CAA does not envisage that competition law requirements would hinder the flow of information between NERL and airline participants that is necessary for Customer Consultation, however this is ultimately the responsibility of each of the parties. In considering the results of Customer Consultation, the CAA will be mindful of the interests of all users of NERL's price-regulated services, and not just the interests of those airlines which participated in or were represented in Customer Consultation.

#### **4. Scope of NERL activities under review**

4.1. The CAA consulted with stakeholders in October 2008, on the scope of the price control. Following this consultation the following NERL activities were decided to be within the scope of the review, and as such, within the scope of the Customer Consultation discussion:

- The Eurocontrol price control, which currently contains the following NERL services, within a single till arrangement:
  - the UK en route business, charged through the Eurocontrol unit rate;
  - London Approach service (this could include the approach services to Luton and London City depending on the CAA's regulatory decisions for CP3);
  - Non-regulated activity, excluding inter-company receipts, but including the North Sea Helicopters service and activity under NERL's contract with the Ministry of Defence; and
- Oceanic en route service, which is separately price controlled;

4.2. NATS (Services) Ltd ("NSL") activity is excluded from the scope of Customer Consultation discussion.

## 5. Strategic questions for discussion

5.1. The core of this approach would entail NERL consulting with customers between April and November 2009, on key price control strategic issues mandated by the CAA, within NERL's Baseline Business Plan. The CAA would expect NERL to consult with customers on the following issues, at a minimum:

- Demand (traffic);
- Customer requirements for safety, capacity, service quality, fuel efficiency, operational contingency and environmental issues;
- Major NERL programmes aimed at meeting current and future customer requirements; and
- Customer priorities where options exist.

5.2. Within these categories, the CAA would expect the following strategic questions to be addressed by NERL and consultees, at a minimum:

### Demand (traffic)

- 1) What is the appropriate traffic forecast (high, low and base cases), on a calendar year annual basis, between 2011 and 2015 for:
  - a. UK En Route CSUs?
  - b. UK En Route kilometre distances?
  - c. Oceanic En Route flights?
- 2) What are the patterns of traffic and shifts in these patterns projected between 2011 and 2015, and what implications might these have for NERL's delivery of capacity and service levels?

### Customer requirements

- 3) What is the customer requirement for safety, both during CP3 and beyond?
- 4) What is the customer requirement for service delivery priorities during CP3?
  - a. Service quality;
  - b. Operational contingency?
- 5) What is the customer requirement for service performance measures and par values for CP3 metrics?
- 6) What are customer priorities where provision of short term service and developing long term future service may need to be traded off against each other during CP3?

- 7) What is the customer requirement for fuel efficiency performance and NERL's wider environmental performance?

#### Major NERL programmes

- 8) What is the appropriate NERL programme delivery capability during CP3?
- 9) What is the customer response to NERL's base case and high case long term investment plan, given the capex financial envelope trade off?
- 10) What is the customer response to NERL's proposal for risk and contingency built into the capital investment financial envelope for CP3?

#### Customer priorities

- 11) What are the customer priorities, where options exist in the areas of service, future service delivery, given cost trade offs (e.g. service requirement versus cost)?

#### Overall Revised Business Plan

- 12) What is the customer response to NERL's proposed revisions to the Business Plan, in the areas of:
  - a. Customer requirements?
  - b. Service delivery?
  - c. Future service delivery?

#### Other questions outside of this list

- 5.3. The CAA does not aim to restrict the level of discussion within Customer Consultation meetings. The list of strategic questions should therefore be seen as a minimum requirement for discussions. The CAA would welcome feedback on other questions discussed during the consultation. It is the responsibility of the CCWG to set agendas for meetings, which reflect the agendas requested and agreed by both NERL and customers.

## 6. Duties of the Regulator – Division of responsibilities

6.1. The CAA remains the overall sponsor of the regulatory price control review within which the Customer Consultation process sits. Its involvement would be:

- to initiate the proposed Customer Consultation process between NERL and its airline users, with the objective of better informing the CAA's own regulatory decision-making in 2010 on the price control to be set then for NERL in the CP3 period;
- to issue a mandate to NERL and its airline customers;
- to request that NERL initiate discussions with airline representatives regarding the appointment of joint chairs (or a mutually agreeable independent chair) of the Customer Consultation Working Group. The CAA would expect to see agreed arrangements put in place as soon as possible, as an essential precursor to the Customer Consultation approach proceeding. If it appears to the CAA that inadequate progress has been made in this area by Easter 2009, then the CAA would have to reconsider whether the basis for proceeding with the Customer Consultation approach is likely to meet its objectives and the options for proceeding with a traditional regulator led approach to the CP3 review;
- to request that NERL develop and then reach agreement with its airline users by the end of March on a code of conduct for the Customer Consultation Working Group: this should include practical ways of working consistent with the resources available on the airline side whilst ensuring that the necessary ground is covered;
- to ensure that the CAA is adequately informed of the progress in and the substance of discussions between NERL and airlines (not least for purposes of taking back the reins should that be necessary), the CAA requests that NERL supply to the CAA all papers, submissions, and data provided to the Customer Consultation Working Group, and minutes and actions arising from meetings of this group, contemporaneous to the airlines receiving this information;
- to enable the CAA to take a fully-informed view of the progress of and prospects for Customer Consultation, the CAA would conduct one 'midterm' review in June/July 2009, at which it would seek both written views from NERL and airline participants and oral briefings from each side (separately and jointly) as to progress and prospects. This approach balances the need to give the consultation adequate time to make progress while keeping open the possibility of the Customer Consultation issues reverting to the CAA should it not do so;
- to enable any party (including those not involved directly in the CCWG exercise) to raise any concerns about the conduct of the Customer Consultation process at any time, the CAA will maintain an 'open door' policy with respect to the views of the parties on this issue. The CAA will

decide how best to respond to any issues raised in light of the specific concerns and the context of the Customer Consultation process at the time.

6.2. In parallel with this NERL/airline consultation between April and November 2009, the CAA would conduct a parallel stream of analytical work on key issues of business risk and efficiency. This regulator-led scrutiny would cover:

- Benchmarking of NERL against other European ANSPs, taking account of relative comparability, including the differing degrees of complexity and traffic volume, and drawing on the extensive work conducted in this area by the Eurocontrol Performance Review Commission and Unit;
- Efficiency of NERL corporate and support functions, potentially going wider than the scrutiny conducted by the CAA in the CP2 review;
- Cost effectiveness of NERL's employment arrangements, including evidence on wages, pensions, employment benefits, training, rostering, industrial relations, and productive time;
- Assessment of NERL's ability to deliver its proposed investment programme in a cost effective manner, taking account of risks, costs and impact on delivery of benefits to users.

6.3. The results of these analyses would then be shared with the CCWG in August 2009 to enable customers to reflect on and, if necessary, revise their initial views and preferences. Where feasible, and consistent with the CAA conducting a thorough and rigorous scrutiny, the CAA would aim to share these outputs at an earlier stage of the Customer Consultation phase, as and when they become available.

6.4. The CAA set out its preliminary views on the appropriate cost of capital for NERL in February 2009 in order to inform NERL's Baseline Business Plan, subsequent Customer Consultations, and the CAA's own analysis.

## 7. CAA expectations of attendee behaviour

### 7.1. The CAA expects NERL to:

- *Initial overview:* provide customers at the outset of discussions, with an overview of NERL's business and performance over the CP2 period, in order to allow customers to become familiar with the context of the price control review;
- *Baseline Business Plan:* provide customers with an initial business plan, which highlights NERL's proposed forecasts for the CP3 period, in the following areas:
  - UK and Oceanic en route traffic;
  - Operating costs (both ongoing and exceptional cost items), highlighting the trajectory of efficiencies possible in each of the years of CP3;
  - Capital investment (both the scope of activities proposed and the proposed cost);
  - Cost of capital and regulatory return;
  - Forecast of regulatory depreciation on the regulatory asset base; and
  - Indicative price profiles for UK and Oceanic en route services, highlighting the value of the average price reduction across CP3;
- *Further background information:* provide customers with information behind key regulatory assumptions and how these translate into an indicative price profile;
- *Co-chair:* provide the CCWG with a co-chair, who will work alongside the customer co-chair;
- *Meeting hosting:* host the meetings and provide the CCWG with meeting venues, at its expense;
- *Website:* communicate material relevant to CCWG meetings on a controlled website, that can be accessed only by airlines engaged in the process<sup>3</sup>;
- *Openness and Transparency:* act in a way that is in keeping with the aims of an open and transparent process, given necessary confidentiality, respecting views expressed in meetings.

### 7.2. The CAA expects customers to:

- *Engagement:* engage with NERL in the process. The CAA believes that the benefits of Customer Consultation are most likely to be realised if customers:

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<sup>3</sup> Airlines can be engaged in the Customer Consultation process either as active participants in the CCWG or as participants in the electronic exchange of information via the NERL Customer Consultation secure access website.

- *Representative:* engage in the process in numbers sufficient to represent NERL's customer base;
- *Senior level input:* are represented by senior staff members, who both have the knowledge (i.e. operational, financial, regulatory etc) and seniority to input practically to discussions and to provide firm positions, which will be supported by the respective airline later in the process;
- *Co-chair:* provide the CCWG with a co-chair, who will work alongside the NERL co-chair; and
- *Confidentiality:* maintain the confidentiality of material shared within the process, to prevent communication of material beyond the airlines and named trade body representatives engaged in the process; and to control internal access to material to relevant staff members who are either engaged directly in CCWG meetings or are part of the governance system for approving decisions on relevant matters;
- *Openness and Transparency:* act in a way that is in keeping with the aims of an open and transparent process, given necessary confidentiality, respecting views expressed in meetings.

7.3. The CAA expects both NERL and customers to:

- *CCWG Plan agreement:* agree a plan and code of conduct for proceeding through the Customer Consultation process;
- *Minutes:* provide the CAA with minutes from each Customer Consultation meeting, detailing areas of agreement and disagreement, citing majority and minority views, agreed with attendees from the meeting;
- *Brief CAA:* meet with CAA following each Customer Consultation meeting and ratification of minutes, to provide the CAA with a verbal update of both the nature of the discussion and progress (or lack of) achieved; and
- *Respect the process:* conduct all Customer Consultation policy discussions within the CCWG framework and to report offline conversations to the body, to ensure that each party in the process has an opportunity to contribute equally to the consultation.

7.4. The CAA will review progress from Customer Consultation in Summer 2009 and will decide whether its expectations have been met by the parties. If there is serious deficiency on any of the expectations, then the CAA may decide to end Customer Consultation and revert to a traditional regulator led process.

## **8. CAA use of Customer Consultation material**

8.1. The Customer Consultation process should deliver the following material:

- Minutes from Customer Consultation meetings; and
- NERL's revised Baseline Business Plan.

8.2. The CAA will treat minutes from the meetings as input into its wider consultation for the CP3 review. The CAA will publish, on its website, the minutes from the process in 2010, at the end of the series of meetings.

8.3. At any stage, the CAA would welcome written submissions from customers and/or NERL. However, respondents should be aware that the CAA will not be considering comments ahead of the start of its review stages in 2010. Further written submissions will be published by the CAA at the end of the series of Customer Consultation meetings.

8.4. The CAA will use NERL's revised Baseline Business Plan as the starting place for its 2010 review activity.

8.5. Subject to the CAA's consideration of the extent to which the results from any Customer Consultation reflected the interests of passengers, cargo shippers and airlines not directly represented in such consultation (informed in part by written submissions from such customers), the CAA would be minded to adopt agreed outcomes and to incorporate such into its own proposals for CP3 price controls. The CAA would also be minded to place weight on partial agreements, for example where NERL and airlines may have converged on proposals for investment, capacity and service quality, while remaining not in full agreement on the projected costs of delivering such over CP3. In such cases, the CAA would form its own judgment and set out its own proposals, for consultation, on the overall combination of projected outputs, costs and regulated revenues which it considered best met its statutory duties.

## **9. Consent to consult**

- 9.1. CAA endorses the establishment and operation of the CCWG, based on the terms of the agreement set out in this document, and with the objective of providing high quality information to the CAA at a formative stage of the CP3 price control review of NERL, to assist the CAA in the conduct of its statutory duties.

